UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHURCH OF SCIENTOLOGY OF GEORGIA, INC., a Georgia Corporation,	)	
Plaintiff,	)	
v.	)	CIVIL ACTION FILE NO.: 1:10-cv-0082-CAP
CITY OF SANDY SPRINGS, GEORGIA, et. al.	)	
Defendants.	)	

DEFENDANTS' MEMORANDUM OF LAW OPPOSING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

COME NOW the City of Sandy Springs, Georgia, and its named elected officials, Defendants in the above-styled action, and file this their Response to Plaintiff's Motion for Partial Summary Judgment.

FACTUAL BACKGROUND

This case is not about Plaintiff's religion, religious beliefs, or its ability to practice its religion in the City of Sandy Springs.[1] Defendants approved Plaintiff's full use of its existing improved 32,053 square foot facility (the "Subject Property") as a church. Complaint ¶ 37, 38; Minutes of Dec. 15 at p. 21-22. Nonetheless, Plaintiff continues to successfully operate a Class Five Organization in a "non-standard" 11,000

[1] Defendants incorporate by reference the "Factual Background" section from their Memorandum of Law In Support of Their Motion for Summary Judgment.

square foot facility in Dunwoody, Georgia. Danos Dep. p. 33-39; Wright Dep. p. 10-12. Despite Plaintiff's unsupported assertions, nothing prevents the Plaintiff from practicing Scientology on the Subject Property in a facility that is three times larger than its facility in Dunwoody. Id.; see also Leathers Decl. ¶ 5. Plaintiff voluntarily chooses to leave the Subject Property vacant – as it has done for the past five years. Danos Dep. p. 30-31; Wright Dep. p. 63-64.

Plaintiff purchased the Subject Property with no understanding of its spatial needs. Complaint ¶ 20; Wright Dep. p. 44-46. At the time of purchase in 2005, Plaintiff knew that all new Scientology churches were required by the Church of Scientology International (CSI) to comply with the strict spatial guidelines for "Class Five Ideal Organizations." Complaint ¶ 35; Danos Dep. p. 50-51. These guidelines, however, were still being researched and developed by CSI in 2005 and were not finalized until 2007. Wright Dep. p. 44-46. Despite lacking this essential information, Plaintiff proceeded with the $5 million purchase of the Subject Property only to later find out that it was spatially inadequate. Complaint ¶¶ 37, 38; Leathers Decl. ¶ 5.

Plaintiff's folly is not unique. Across the country new church facilities were purchased before CSI completed its study of the spatial requirements for Class Five Ideal Organizations.

Wright Dep. p. 43-45, 63-64 & Exh. 14. In fact, due to the backlog of church projects, Scientology church facilities are often purchased in advance of space planning and allowed to sit vacant. Id. at p. 63-64. As a result of these planning practices, several facilities like those in Tampa, Fla., San Francisco, Cal., and Los Gatos, Cal., were found to be spatially inadequate several years after their purchase. Id. at p. 126-128 & Exh. 14. Inadequate facilities, like those in Tampa and San Francisco, have been abandoned and larger facilities purchased as replacements. See Id.

Here, rather than purchase a larger facility or a second supplemental facility (as was done in Seattle, Wash.), Plaintiff decided it would convert the basement parking area of the existing facility into improved interior space. Complaint ¶¶ 42, 43; Wright Dep. p. 123. While this allowed Plaintiff to meet CSI's spatial requirements, it did so only by impermissibly sacrificing almost a third of the available parking. Complaint ¶ 48, Doc. 42-2 p. 12. No additional parking was proposed or available to accommodate Plaintiff's proposed expanded use. Id.; Leathers Decl. ¶ 5. As a result, Defendants' denied Plaintiff's proposed expansion based on the lack of adequate parking. Complaint ¶ 64; Minutes of Dec. 15 at p. 21-22.

Plaintiff claims that it should have been treated as a "Church" under Section 18.2.1 despite its own admissions indicating that it does not meet the Zoning Ordinance's definition of a "Church." Under Section 18.2.1 of the Sandy Springs Zoning Ordinance, required parking is calculated by classifying the nature of the proposed use and applying the most analogous use-based parking standard. Leathers Decl. ¶ 6. Under the Zoning Ordinance, a Church is defined as an assembly-type use. Zoning Ord. § 3.3.1; Leathers Decl. ¶ 7. Throughout the rezoning process Plaintiff regularly stated that its use was not primarily for assembly-style worship but rather individual study, coursework, and counseling. Leathers Decl. ¶¶ 8. Defendants classified Plaintiff's use accordingly and consistently applied the standards from Section 18.2.1 to determine the level of required parking. Leathers Decl ¶¶ 9, 10.

Contrary to Plaintiff's assertions, Plaintiff never proposed providing parking in conjunction with its renovation sufficient to meet Defendants' parking requirement. Using the parking standards in Section 18.2.1 and a breakdown of the proposed uses provided by Plaintiff, Staff determined that Plaintiff's renovated use required 148 parking spaces. Leathers Decl. ¶¶ 9, 10. Even using a more generous standard generated at Plaintiff's behest, Staff determined that a minimum of 130 parking spots were required. Leathers Decl. ¶ 14. Plaintiff's proposed renovation reduces the number of available parking spaces to 81. Leathers Decl. ¶ 10. Even after Plaintiff's proposed restriping of the surface lot, a maximum of only 111 parking spaces can be provided. Leathers Dec. ¶¶ 14, 15.

Plaintiff repeatedly insisted that there was sufficient parking on the site to meet its subjective requirements even though all the evidence that it provided Defendants as support was either incomplete or indicated the contrary. Leathers Decl. ¶ 11. The parking studies submitted by Plaintiff failed to provide necessary evaluative information concerning the full operating capacity of each facility and how close each facility was to operating at full capacity at the time of the study. Leathers Decl. ¶ 13. Additionally, the parking study of Plaintiff’s Dunwoody facility showed an average person to car ratio for Georgia congregants of 1:1. Doc 39-1 at p. 9. This stands in stark contrast to both the Nashville and Buffalo facilities where the ratio was closer to 2:1. Doc. 39-1 at p. 15; Doc 39-3 at p. 3. Given Plaintiff’s plan to have 100 staff members on site at all times and utilizing the 1:1 person to car ratio for Plaintiff’s Georgia congregants, it is implausible to suggest that of the remaining 11 (out of the 111 spaces planned) parking spaces would be sufficient to service the regular flow of congregants to and from the site throughout the week. Plaintiff’s Response to Defendants’ First Continuing Interrogatories at p. 5-6; Complaint ¶ 17; Leathers Decl. ¶ 8.

ARGUMENT & CITATIONS TO AUTHORITY

This case is strictly about Plaintiff's unwillingness to provide adequate parking for its proposed expansion of the Subject Property. Plaintiff's attempts to dress up the Defendants' rezoning decision in the trappings of religious discrimination simply fail in the face of the facts and the law.

A. Defendants did not discriminate against Plaintiff on the basis of religion or its religious beliefs.

RLUIPA's prohibition of discrimination on the basis of religion is clear; Plaintiff's claim of religious discrimination in this case is not. See 42 U.S.C. 2000cc(b)(2). Defendants denied Plaintiff's proposed expansion of the Subject Property because Plaintiff failed to demonstrate that it could provide adequate parking to service its proposed expanded use. Nothing about this decision was based on Plaintiff's religion or religious beliefs. See Wright Dep. 54, 72-73. Nor does the evidence even remotely suggest that it was based on a veiled attempt to prohibit Plaintiff from practicing its religion in the City. Complaint ¶ 37, 38; Minutes of Dec. 15 at p. 21-22. Ultimately, it is only through broad overgeneralizations and linguistic imprecision that Plaintiff is able to craft the faintest illusion of unequal, discriminatory treatment by Defendants.

1. As is done in every case, Defendants worked with Plaintiff to fully understand the nature of its proposed use and accurately apply the parking standards of its Zoning Ordinance.

Contrary to Plaintiff's representations, Defendants consistently applied the parking standards from Section 18.2.1 to determine the amount of parking required by Plaintiff's proposal to expand the Subject Property. Leathers Decl. ¶ 10; Doc 42-2 at p. 21-22. Even a brief reading of Defendants' planning staff's initial report makes it clear that Section 18.2.1 was used to calculate the initial 148 parking space requirement. Id. As is customary in applying Section 18.2.1, Defendants' worked with Plaintiff to understand the nature of its proposed used. See Leathers Decl. ¶ 6. Required parking was then calculated using Plaintiff's own square footage breakdown of the multiple uses proposed for the facility and the standards in Section 18.2.1 that best correlated to each of the proposed uses. Id.

This method of calculating required parking is consistent with that applied to other multi-use religious facilities similar to Plaintiff. Doc. 41, p. 8-14. For example, Kadampa Meditation Center, located at 6860 Peachtree Dunwoody Road in Sandy Springs applied to Defendants for a rezoning to house both a church and boarding house in an existing structure. Id. There, Defendants calculated the parking requirement based the same multi-use formula applied to Plaintiff in this case. Id. Required parking for both the church use and boarding house use were calculated separately and then added together to come up with a total parking requirement for the facility. Id.

Plaintiff claims that Defendants' "failure or refusal" to apply the "church" use standard from Section 18.2.1 constitutes religious discrimination. This ignores the fact that Plaintiff, by its own admission and unlike other religious organizations to whom the "church" standard has been applied, does not meet the definition of a "church" under the Zoning Ordinance. See Zoning Ord. § 3.3.1. "Churches" in Section 18.2.1 are defined as an assembly-type use. Id.; Leathers Decl. ¶ 7, 8. At the outset of the rezoning process, Plaintiff volunteered that its primary use was not for assembly-type congregational worship services but rather individual study, counseling, and coursework. Id. This sets it apart from all of the churches used by Plaintiff as comparators. To accept Plaintiff's argument requires one to turn a blind eye to the practical realities of a religion's use of its property in favor of an over-generalized fiction that all religions operate and worship the same way. This is simply not the case,[2] and Defendants should not be punished for refusing to

[2] This is not to deny that Scientology is a religion as Plaintiff would have this Court believe. Plaintiff's argument

accept this fiction in the application of their parking standards.

Furthermore, to the extent that the record reflects that Defendants later deviated from the parking standards in Section 18.2.1 in determining Plaintiff’s parking requirement, it was based on an attempt to work with Plaintiff following Plaintiff’s objection to the accuracy of the Defendants’ initial Section 18.2.1 calculation. Recognizing the unique nature of Plaintiff’s proposed use, Defendants afforded Plaintiff the opportunity to demonstrate either through a parking study or a shared parking analysis that the parking it intended to provide was sufficient to serve its expanded use of the Subject Property. See Doc. 42-2 p. 26. Plaintiff in response submitted an incomplete parking study that lacked essential evaluative information. Despite this fact, Defendants used the available data to generate a more generous parking requirement of 130 parking spaces. It is disingenuous for Plaintiff to now complain that Defendant’s attempts to craft a more accurate parking standard somehow constitutes discriminatory treatment – particularly when

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ignores the neutral, generally applicable use-based definition of “church” under the Zoning Ordinance and instead relies on the faulty premise that “all religions are churches.” This is a dangerous overgeneralization and an imprecise use of language. A church is a type of facility that is used by religions. Not all religions build or use churches. The terms “religion” and “church” are not synonymous and cannot be used interchangeably.

Plaintiff insisted upon such special treatment in the first place.

2. There is no evidence showing that Plaintiff was treated less favorably than any other similarly situated religious organization.

Plaintiff makes no attempt to establish the similarity of its comparators or even to explain how it was treated any less favorably in the calculation of its parking requirement. Even though Plaintiff’s comparators’ applications were granted, the mere fact that a dissimilarly situated religious organization reached a different outcome from Plaintiff does not establish a claim of religious discrimination. Midrash Sephardi Inc. v. Town of Surfside, 366 F.3d 1214, 1232-33 (11th Cir. 2004); see also Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County, 450 F.3d 1295, 1313 (11th Cir. 2006). In order to make out a case of discrimination, Plaintiff must show that it was treated differently from a similarly situated religious organization. Id.

First, in the case of Lutheran Church of the Apostles, the church sought a use permit to construct an 8,770 square foot sanctuary on the front of its existing church/daycare facility. Doc 41-8 p. 2. The sanctuary was planned to have 450 seats that the Lutheran Church stated would be in place 95% of the time. Id. at 17. Four hundred and fifty seats was the maximum seating capacity for the sanctuary and it was not anticipated that use of the facility would exceed 450 seats. Doc. 41 p. 27-29. Being the most analogous parking standard to the Lutheran Church's proposed use, Defendants applied the "church" parking standard for fixed seats to calculate the parking requirement of 129 parking spaces for a proposed 28,322 square foot facility. Doc. 41-8 p. 10. The Lutheran Church satisfied this requirement. Id.

Unlike Plaintiff, the Lutheran Church's primary use of the proposed 8,770 square foot sanctuary was for an assembly-type use that fell within the definition of "church" under the Zoning Ordinance. Doc. 41-8 p. 2, 10, 17. Plaintiff volunteered early in the rezoning process that its primary use was not for assembly style worship, but rather individualized coursework, study, and counseling. Additionally, the Lutheran Church's sanctuary accounted for roughly 31% of the gross floor area of the facility as where Plaintiff's only accounted for 3%. See Id. at p. 10; Leathers Decl. ¶ 8. Lastly, the Lutheran Church was able to satisfy Defendants' parking requirement – a less generous requirement that required more parking per square foot of the facility than that imposed on the Plaintiff in this case. Doc. 41-8 p. 12.

Second, in the case of Congregation Beth Tefillah, the applicant sought a use permit to allow for the addition of a 13,600 square foot preschool to its existing 19,036 square foot synagogue. Doc. 41-11 p. 4. Applying the corresponding standards for a church and daycare facility from Section 18.2.1, Defendants determined that the Beth Tefillah's synagogue required 76 parking spaces and the preschool required 29 parking spaces for a total of 105 parking spaces. Id. at 12. Beth Tefillah provided 71 parking spaces on-site. Of these 71 spaces, 38 of them could be shared between the synagogue and the daycare as per the Section 18.2.2 of the Zoning Ordinance. Doc. 41 p. 44-45. The remaining 6 required spaces were provided through a shared parking arrangement with a Hebrew school located up the road. Id.

Similar to Plaintiff, the Congregation Beth Tefillah fell short of the required level of parking for its facility, and it was given the opportunity to demonstrate the adequacy of its proposed parking through a shared parking arrangement. Doc. 41 p. 42-45. Unlike Plaintiff, the synagogue came forward with a shared parking arrangement that satisfied the Defendants' parking concerns with respect to the six spaces at issue.[3] Not once did Plaintiff come forward with a similar shared parking

[3] Defendants recognize and admit that they made a mistake in how they handled this particular application. Doc 41 p. 45-46. Congregation Beth Tefillah should have been required to apply for a variance for the 6 spaces provided through the shared parking agreement. Id. The fact that Defendants made a mistake in this one case, however, does mean that all zoning restrictions should be abandoned or nullified with respect to all future applicants.

arrangement, even though given the opportunity to do so by Defendants. See Doc. 41 p. 27-28; Doc. 42-2 p. 26. It is impossible to compare Defendants' treatment of Congregation Beth Tefillah with regards to shared parking (erroneous as it might have been) to Defendants' treatment of Plaintiff who never offered a similar shared parking proposal in connection with its application. The fact that a variance might have been required for synagogues shared parking arrangement is irrelevant, and Plaintiff provides no explanation for how it demonstrates that Plaintiff was treated any less favorably by Defendants.

Third, in the case of the Zainabia Center, Zainabia Non-Profit Inc. sought to build a new break room that required it to bring its non-conforming parking lot into compliance with current regulations. Doc. 41-20 p. 12. Zainabia sought five primary variances to allow expansion and reconfiguration of the existing non-conforming parking lot. Id. One of these variances sought to reduce the required parking from 57 to 42 spaces. Id. at p. 1. Zainabia provided evidence that it had operated on the site for twelve years with twenty parking spaces without any parking problems. Id. at 14; Doc. 41 p. 66-69. Based on this evidence, staff recommended and Defendants approved the requested variances. Id.

Zainabia's application for a variance from Defendants' parking requirement is not comparable to Plaintiff's rezoning application. To begin with, the considerations that go into granting a variance are significantly different from the considerations on rezoning. See Primera Iglesia, 450 F.3d at 1311-1312. Where a variance creates an individualized exception to alleviate a particular landowner's hardship, a rezoning changes the zoning scheme affecting the rights of all future landowners. Id. Plaintiff's rezoning and Zainabia's variance applications procedurally are not comparable. Furthermore, Plaintiff never applied for or requested a variance from Defendants' parking requirement. It is impossible to determine whether Plaintiff would have been treated any less or more favorably than Zainabia with regard to any request it might have made for a variance from Defendant's parking requirement. Also, unlike Plaintiff, Zainabia came forward with concrete evidence based on twelve years operating at the site that demonstrated that its peak parking demand would not exceed the reduced level of parking. Doc. 41 p. 66-69; Doc. 41-20 p. 14.

Fourth, in the case of the Kadampa Meditation Center, Kadampa sought a use permit to operate a church and a boarding house in its existing 7,430 square foot facility. Doc. 41-6 p. 4. Using the parking standards in Section 18.2.1 for both church uses and boarding house uses, Defendants determined that the total parking required was 41 spaces. Id. at 13. Based on the property's proximity to MARTA it was eligible for a 15%

reduction, lowering the parking required to 35. Id. Kadampa exceeded the Defendant’s parking requirement by providing 41 spaces. Id. At the hearing, the City Council responded to community concerns by attaching a condition that prohibited parking in the surrounding neighborhoods and office complexes without an agreement. Doc. 41 p. 13-14. Staff did not recommend this condition. Id.

The outcome in the case of Kadampa Meditation Center is readily distinguishable from Plaintiff. While both Kadampa and Plaintiff proposed multi-use religious facilities and Defendants applied the same multi-use formula to calculate their parking requirement, Kadampa, unlike Plaintiff, was able to exceed Defendant’s parking requirement for its facility. Doc. 9-10,13-14; Doc. 41-6 p. 13-14. Even though Defendants imposed a condition to Kadampa’s application, this condition was motivated by community concerns specific to that application and not Kadampa’s inability to meet Defendants’ parking requirement. Id. It is impossible to say whether this condition would have alleviated Defendants’ concerns in this case or that the failure to apply this condition constitutes discrimination on the basis of religion rather than a mere recognition of the fact that Plaintiff cannot provide adequate parking for its proposed expansion.

When viewed as a whole, the only thing proven by Plaintiff's comparators is that Defendants consistently work with religious organizations to understand the precise nature of their proposed use and apply their parking standards accordingly. In each of these instances, Defendants applied the parking standards from Section 18.2.1, and then the applicant was given the opportunity to provide information demonstrating that parking at its facility was sufficient to serve its proposed use. See Doc. 41-6 p. 13; Doc. 41-8 p. 10; Doc. 41-11 p. 12; Doc. 41-20 p. 12-13. Some provided information demonstrating the maximum capacity of their facility, others provided information regarding shared parking arrangements, and still others provided information demonstrating actual long-term demand for parking at the facility. For those who were unable to satisfy the parking requirements, Defendants allowed them to apply for a variance. Doc. 41-20 p. 12-13. Plaintiff was afforded these same opportunities and the mere fact that it reached a different outcome is not evidence that it was treated any less favorably. Defendants consistently applied their Zoning Ordinance and afforded Plaintiff the same opportunities as all applicants in determining required parking.

3. Defendants' rezoning decision survives strict scrutiny.

Plaintiff cannot make out a case of religious discrimination. In any event, Defendants' denial of the proposed expansion for lack of adequate parking survives even the strictest of constitutional scrutiny.

Defendants' denial served a compelling interest in ensuring that Plaintiff's proposed expansion was served by adequate parking. Plaintiff asserts that parking is not per se a compelling interest, but ignores the facts of this case which indicate the contrary. Furthermore, the case cited by Plaintiff never decided the question of whether parking is or is not a compelling interest and certainly does *not* stand for the proposition that parking is never a compelling interest. Lighthouse Community Church of God v. City of Southfield, 2007 WL 30280 (E.D. Mich. 2007) ("This Court need not determine whether parking and traffic problems are a compelling government interest…").

Here, the Subject Property is located on the northeast corner of the busy intersection of Roswell Road and Glenridge Drive. Complaint ¶ 37. Both of these roads are heavily traveled, major multi-lane streets. Leathers Dec. ¶ 5; Moore Dep. p. 36. On average, this segment of Roswell Road generates almost 36,000 trips daily. Glenridge Drive generates close to 17,000 trips daily. Id. Local citizens complain that traffic regularly backs up at the already poorly designed intersection and blocks ingress and egress from neighboring apartments and condominiums causing accidents and creating safety hazards. Transcript of

Nov. 19, 2009 Planning Commission Meeting, p. 18-19. Overflow from Plaintiff's property will inevitably burden neighboring properties due to the lack of available off-site paid or public parking within the vicinity of the Subject Property. Leathers Decl. ¶ 5.

Compounding matters is the nature and intensity of Plaintiff's proposed use. Plaintiff proposed a 43,000 square foot multi-use facility housing over 11,000 square feet of office space, over 11,000 square feet of classroom space, and a 1,200 square foot sanctuary. Doc. 42-2 at p. 21-22. It admits that, unlike "traditional churches," its use is not primarily for large assembly-type gatherings on a single day but rather individual coursework and study throughout the week. At all times during the week and on weekends, Plaintiff intends to have 100 staff members on site. With a demonstrated person to car ratio of 1:1 in the Atlanta metro area, the maximum number of spaces available for congregants given Plaintiff's anticipated staffing level is 11 out of a total of 111 spaces provided. It is simply unrealistic to assume that this is a sufficient level of parking for a growing congregation that requires over 43,000 square feet of church space.

Based on these facts, allowing Plaintiff to create this type of overdeveloped/underparked facility on the corner of the busy intersection of Roswell Road and Glenridge Drive is a serious threat to public safety and welfare. The backlog of traffic caused by a lack of parking and as cars attempted to enter and exit the facility would increase the hazardous nature of the already poorly designed intersection. Furthermore, like falling dominoes, the lack of adequate parking on Plaintiff's property would create a net deficit of available parking for the immediately surrounding area as Plaintiff's overflow attempted to find alternative parking arrangements. Plaintiff should not be allowed to unfairly impose its parking burden on its neighbors and the public at large as a result of its poor planning.

In addition to serving a compelling interest, Defendants' requirement that Plaintiff provide adequate parking to service its proposed expansion is narrowly tailored to achieving that interest. There is no other method for ensuring that a facility is not underparked other than simply requiring the landowner to provide adequate parking in the first place. Under any alternative, Plaintiff is allowed to create an overdeveloped/underparked facility that results in a net decrease in the amount of available parking for the area while increasing density. This unfairly imposes Plaintiff's parking burden on the neighboring properties and the public at large.

Furthermore, Plaintiff's proposed alternatives – like the suggested occupancy limit – were determined to be unenforceable by Council. Aside from the logistical difficulties of determining a violation, Defendants had serious concerns about the impact enforcement would have on religious exercise considering that it would necessitate interruption and removal of religious congregants from religious services. Complaint ¶ 64; City Council Minutes of Dec. 15, 2009 at p. 21-22.

B. Plaintiff is not unreasonably limited within the City of Sandy Springs by either Defendants' rezoning decision or its parking requirement.

RLUIPA prohibits a municipality from imposing unreasonable limitations on religious assemblies, institutions, or structures *within a jurisdiction*. 42 U.S.C. 2000cc(b)(3) (emphasis supplied). As emphasized, the purpose of this provision "is not to examine the restrictions placed on individual landowners, but to prevent municipalities from broadly limiting where religious entities can locate." Adhi Parasakthi Charitable, Medical, Educational, and Cultural Society of North America v. Township of West Pikeland, 721 F. Supp. 2d. 361, 387 (E.D. Penn. 2010). Particularized limitations on individual properties are beyond the scope of RLUIPA's unreasonable limitation provision. Id. The focus of RLUIPA's unreasonable limitation is city-wide.

While the case law applying this provision is limited, district courts in the 11th Circuit have found the relevant inquiry to be "whether the number of sites available under the zoning scheme provides a reasonable opportunity for religious expression.” Chabad of Nova, Inc. v. City of Cooper City, 575 F.Supp.2d 1280, 1289 (S.D. Fl. 2008). This is further supported by the legislative history which states that “ ‘[w]hat is reasonable must be determined in light of all the facts, including the actual availability of land and the economics of religious organizations.’ ” Vision Church, United Methodist v. Village of Long Grove, 468 F.3d 975, 990 (7th Cir. 2006).

Here, Plaintiff cannot show that it has been completely excluded from the City or unreasonably limited in its ability to locate a church within the City. Plaintiff is free to practice its religion on the Subject Property which is currently served by sufficient parking and significantly larger than its Dunwoody facility. As it has done in other instances, Plaintiff is free to purchase a second facility to supplement its use of the Subject Property to the extent that it is spatially inadequate. Plaintiff is also free to sell the Subject Property and purchase another property within the City that is large enough to meet both its needs and the Defendants’ parking requirement. There is no evidence in the record that Defendants’ parking requirements prohibit or even limit Plaintiff’s ability to locate a church anywhere within the City of Sandy Springs.

Plaintiff’s argument is premised solely on an unsupported legal assertion that attempts to backdoor a strict scrutiny standard into what was intended to be a straight-forward analysis of reasonability. Under the Plaintiff's interpretation all zoning limitations on every specific piece of property would be required to pass the highest of constitutional bars – strict scrutiny – in order to be deemed "reasonable" under RLUIPA. Not only is Plaintiff's construction of the "unreasonable limitation" provision unsupported by the plain language of the statute and its legislative history, but Plaintiff cannot cite a single case from any jurisdiction supporting, applying, or even considering this impossibly high standard of review.

C. Defendants did not violate Plaintiff's First Amendment Right to Free Exercise.

Plaintiff erroneously claims that strict scrutiny is the appropriate standard under which to analyze its Free Exercise claim. Neutral laws of general applicability that only incidentally burden religion (like Defendants' parking ordinance) are subject to only rational basis review, not strict scrutiny. Employment Dev., Dept. of Human Res. v. Smith, 494 U.S. 872, 879 (1990). Plaintiff fails to establish that Defendants' parking ordinance is not neutral or generally applicable.

Contrary to Plaintiff's assertions, the mere existence of an "individualized governmental assessment" without more does not violate the principles of neutrality and general applicability. Lukumi Babalu, 508 U.S. at 542-43 ("All laws are selective to some extent … [but] inequality results when a legislature decides that the governmental interests it seeks to advance are worthy of being pursued only against conduct with a religious motivation.”); Midrash, 366 F.3d at 1234 (“Zoning laws inherently distinguish between uses and necessarily involve selection and categorization…”). Consistent with Supreme Court precedent, the 11th Circuit holds that, “A zoning law is not neutral or generally applicable if it treats similarly situated secular and religious assemblies differently.” Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1232 (11th Cir. 2004). More specifically, the neutrality principle is violated where a zoning law improperly targets religious assemblies or has as its object the suppression of religion. Id.; see also Lukumi Babalu Aye, Inc.v . City of Hialeah, 508 U.S. 520, 534 (1993). As a corollary, the principle of general applicability is violated where a municipality’s interests are pursued only against conduct motivated by religious belief. Midrash, 366 F.3d. at 1232-1234; see also Lukumi Babalu, 508 U.S. at 545.

Here, Plaintiff provides no evidence that Defendants’ parking requirement improperly targets religion, is aimed at suppressing religion, or is enforced solely against religious conduct. As discussed in Division A, Defendants’ rezoning decision does not discriminate against Plaintiff on the basis of religion or its religious beliefs. Defendants’ denial of

Plaintiff’s proposed expansion was based on only one thing – the lack of adequate parking. Defendants’ parking requirement is neutral and generally applied to all properties regardless of their religious character. Leathers Decl. ¶ 6. Scientology does not have any beliefs, practices, or religious mandates with respect to parking at its facilities. Wright Dep. p. 54, 72-73. Furthermore, Defendants’ decision does not have the purpose or effect of inhibiting or suppressing Plaintiff’s religion. In fact, Defendants approved Plaintiff’s use of the existing facility on the Subject Property as a church.

Failing to show that Defendants’ parking requirement is not neutral or generally applicable means that Plaintiff bears the burden of showing the Defendants lacked any conceivable rational basis for their rezoning decision. See First Vagabonds Church of God v. City of Orlando, 610 F.3d 1274, 1285 (11th Cir. 2010). Plaintiff cannot meet this burden. As discussed in Division A(3), Defendants’ parking requirement and rezoning decision not only satisfy the rational basis standard, but also survive strict scrutiny.

D. Finally, Plaintiff fails to establish that it is substantially burdened by Defendants’ rezoning decision.

Under RLUIPA’s “substantial burden” provision, Plaintiff bears the initial burden of proving a prima facie case of substantial burden. 42 U.S.C. § 2000cc(a). The 11th Circuit clearly defines a substantial burden as, "more than an inconvenience on religious exercise; a 'substantial burden' is akin to significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly. Thus, a substantial burden can result from pressure that tends to force adherents to forego religious precepts or from pressure that mandates religious conduct." Midrash Shephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1227 (11th Cir. 2004). This is a very high bar that Plaintiff simply cannot reach.

To begin with, Defendants' parking requirement and rezoning decision do not require Plaintiff to forego any of its religious precepts or tenets. See Wright Dep. p. 54, 72-73 (stating Scientology does not have any religious beliefs concerning parking). There is absolutely no evidence to support Plaintiff's claim that it has been forced to forego the practice of its religion. Plaintiff is entitled to use the existing facility on the Subject Property for the practice of Scientology but simply *chooses* not to do so because the structure does not conform to its "ideal" requirements. Courts in the 11th Circuit have been particularly unwilling to find a "substantial burden" in cases with facts similar to this one where plaintiffs are still able to practice their religion, even if in a less than ideal setting.

For example, in Midrash Sephardi v. Town of Surfside, the Town of Surfside prohibited churches and synagogues from locating in any zoning district other than RD-1 residential districts. 366 F.3d at 1220. Two Orthodox Jewish congregations operated synagogues in the Town's business district, and sued the Town after it attempted to enjoin their operation. Id. According to the synagogues, the Town's zoning restrictions imposed a substantial burden on their religious exercise because their congregants, who were religiously forbidden from using cars or other modes of transportation on the Sabbath and religious holidays, would be required to walk several blocks further to attend religious services at a synagogue located in an RD-1 district. Id. at 1221 & 1227. The synagogues claimed that the longer walk not only imposed a significant burden on the young, ill, and very old, but also would likely lead to a decrease in attendance that could require them to cease operations altogether. Id. at 1227. The 11th Circuit found the synagogues' argument unpersuasive and ultimately held that "While we certainly sympathize with those congregants who endure Floridian heat and humidity to walk to services, the burden of walking a few extra blocks, made greater by Mother Nature's occasional incorrigibility, is not 'substantial' within the meaning of RLUIPA." Id. at 1228.

Similarly, in The Williams Island Synagogue, Inc. v. City of Aventura, an Orthodox Jewish synagogue brought a substantial burden claim against the City of Aventura after the City denied the synagogue's application for a conditional use permit for their new, larger 6,000 square foot facility. 358 F. Supp. 2d. 1207, 1211 (S.D. Fla. 2005). Due to the lack of space in the synagogue's current facility, its congregants were forced to endure three distractions that affected the provision of religious services – 1) women were forced to walk through or around the men's prayer area, 2) the kiddush was prepared in the prayer area while service was ending, and 3) congregants were required to rotate their bodies in order to pray facing towards Jerusalem. Id. at 1210. The synagogue claimed that the City's denial imposed a substantial burden by forcing the synagogue to continue to operate in an inadequate facility and endure these distractions. Id. In evaluating the synagogues' substantial burden claims, the Florida district court initially noted that the purported "distractions" could either be solved or mitigated at the current location so as to not violate Jewish law or significantly interfere with congregants' religious practice. Id. at 1215. The court ultimately concluded that the synagogue failed to establish that the "distractions" complained of rose to the level of a substantial burden. Id. For the court, "RLUIPA

[did] not protect religious assemblies from being distracted while observing their religious beliefs." Id.

The burdens imposed by the Defendant's rezoning decision in this case are no different from those in Midrash and Williams Island. Both plaintiffs in Midrash and Williams Island were forced as a result of the Defendants' zoning decisions to practice their religion in facilities that were considered undesirable or less than "ideal." Similarly, Plaintiff's asserted burden in this case is, at best, that it is will have to practice its religion in a "cramped" facility that is less than its "ideal." See Danos Dep. p. 36-38. Plaintiff provides no evidence – other than mere assertions - that it will be forced to forego any of its religious precepts. Plaintiff's argument is difficult to countenance when Plaintiff continues to operate in 11,000 square feet despite being authorized to use over 32,000 square feet. While the existing facility on the Subject Property might be less than Plaintiff's "ideal," being "cramped" is not a *substantial* burden on Plaintiff's religious exercise; at best it is an inconvenience or mere burden akin to being distracted during the provision of religious services or having to walk farther to attend religious services. See Midrash 366 F.3d at 1228; William Island 358 F. Supp. 2d. 1215.

The court's analysis in William's Island is particularly instructive given the fact that the "distractions" in that case all stemmed from being "cramped" in a facility that was too small to meet the congregation's ideal needs. Here, like in Williams Island, Plaintiff's only asserted burden amounts to a claim of "distraction" based on the lack of adequate space in the facility it decided to purchase. See Danos Dep. p. 38-39. Williams Island makes it clear that RLUIPA does not guarantee religious organizations the right to an "ideal" worship environment free of "distractions." Furthermore, just like in Williams Island, Plaintiff in this case has demonstrated the ability to cope with operating in a "nonstandard" or less than ideal facility without violating any of its religious precepts. In fact, since it purchased the Subject Property in 2005 Plaintiff has let the facility sit empty and continued to practice Scientology, coping with distractions, in a Dunwoody facility a third of the size of the Subject Property. Danos Dep. p. 33-39.

Furthermore, any burden experienced due to a lack of space on the Subject Property is self-imposed and not a direct result of Defendants' denial of Plaintiff's proposed expansion. See Adhi Parasakthi Charitable, Medical, Educational, and Cultural Society of North America v. Township of West Pikeland, 721 F. Supp. 2d. 361, 379 (E.D. Penn. 2010). ("We cannot find that the Free Exercise Clause protects a plaintiff that willfully ties itself to a plot of land, knowing that zoning approval is required for its desired use, and then demands that the zoning board not apply an ordinance to it because denying the desired use would impinge its exercise of religion.”).

Plaintiff prematurely purchased the Subject Property without a clear understanding of its spatial needs and as a result ended up with a facility that was too small to accommodate its anticipated level of use. The burdens associated with renovating the facility, reengineering the facility, relocating the facility, or otherwise choosing to operate in a facility that is too small all stem from Plaintiff’s poor planning and hasty decision-making. Defendant’s rezoning decision did not make the facility inadequate; the facility was inadequate at the time of purchase.

Furthermore, nothing about Defendants’ rezoning decision *requires* Plaintiff to incur any of the costs asserted. Plaintiff provides no evidence showing that it has no other choice than to incur the cost of reengineering the existing facility or that those costs are substantial. Plaintiff may always choose to operate in the existing facility and purchase a second supplemental facility to house the religious services that it might be unable to provide comfortably on the Subject Property. Other churches of Scientology have employed this strategy successfully to meet the requirements for a “Class Five Ideal Organization.” Wright Dep. 122-23. Plaintiff may also choose, if it so desires and now that it knows how much space it needs, to relocate to another facility that more adequately meets the needs of its congregation. Plaintiff has produced no evidence to support any argument that the Subject Property is the only property available for use or that it is religiously mandated to operate on the Subject Property.

Despite Plaintiff's arguments, relocating to a more suitable facility does not impose a substantial burden under RLUIPA. See Men of Destiny Ministries, Inc. v. Osceola County, 2006 WL 3219321 (M.D. Florida 2006) (holding no substantial burden where church could relocate and other locations were reasonably available within the county); Midrash Sephardi., 366 F.3d at 1227 n.11 (relocating not a burden even if due to market conditions a suitable facility is not available). Any claimed burden associated with the "delay, uncertainty, and cost" of relocating to a more suitable facility is not compensable in the 11th Circuit. Midrash Sephardi, 366 F.d at 1227. The 7th Circuit standard cited by Plaintiff has been expressly rejected in the 11th Circuit. Id. Furthermore, Plaintiff is not required to abandon the property that it owns or forego the practice of its religion for an uncertain period of time as it searches for a more suitable location. The significance of any burden of delay or uncertainty experienced by the Plaintiff is mitigated by the fact that Plaintiff has voluntarily delayed moving into the

Subject Property for more than five years and continues to faithfully practice its religion in a much smaller facility.

Plaintiff’s failure to establish a prima facie case of substantial burden means that the Court need not even consider whether Defendants’ rezoning decision survives strict scrutiny. Plaintiff’s claim fails as a matter of law. Even assuming, however, that Plaintiff is able to establish a substantial burden, as discussed in Division A(3), Plaintiff’s claim fails because Defendants’ rezoning decision serves a compelling interest and is the least restrictive means of achieving that interest.

CONCLUSION

Plaintiff, having failed to establish a viable claim as a matter of law, is not entitled to any of its requested relief– preliminary and permanent injunction, § 1983 damages, § 1988 costs, or otherwise. As such, Plaintiff’s Motion for Partial Summary Judgment should be denied and judgment entered in favor of the Defendants on their Motion for Summary Judgment.

[Signatures on next page]

Respectfully submitted this 12th day of January, 2011.

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ADDENDUM TO DEFENDANTS' MEMORANDUM OF LAW OPPOSING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Local Rule 7.1, N.D. Ga. the undersigned counsel certifies that the brief filed with the court was prepared with Courier New (12 point), one of the font and point selections approved by the Court in Local rule 5.1B, N.D. Ga.

This the 12th day of January, 2011.

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHURCH OF SCIENTOLOGY OF GEORGIA, INC., a Georgia Corporation,	)	
Plaintiff,	)	
v.	)	CIVIL ACTION
	)	FILE NO.: 1:10-cv-0082-CAP
CITY OF SANDY SPRINGS, GEORGIA, et. al.	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2011 I electronically filed the foregoing **DEFENDANTS' MEMORANDUM OF LAW OPPOSING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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